

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CRAIG CUNNINGHAM,	§	
	§	
	§	CIVIL ACTION NO. 4:20-CV-00142-RWS-KPJ
Plaintiff,	§	
	§	
v.	§	
	§	
USA AUTO PROTECTION, LLC, <i>et al.</i> ,	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation (Docket No. 90), recommending that Plaintiff Craig Cunningham's Motion to Dismiss Defendant USA Auto Protection, LLC's Counterclaim under Federal Rule of Civil Procedure 12(b)(6) (Docket No. 40) be denied. No party has filed objections to the report. Because no objections to the Magistrate Judge's Report have been filed, no party is entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, they are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Services Automobile Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the motion and the Magistrate Judge's report and agrees with the report. See *United States v. Raddatz*, 447 U.S. 667, 683 (1980) ("[T]he statute permits the district court to give to the magistrate's proposed findings of fact and recommendations 'such weight as [their] merit commands and the sound discretion of the judge warrants.' ") (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is therefore

ORDERED that the Magistrate Judge's report and recommendation (Docket No. 90) is **ADOPTED** as the opinion of this Court. Plaintiff's Motion to Dismiss Defendant USA Auto Protection, LLC's Counterclaim under Federal Rule of Civil Procedure 12(b)(6) (Docket No. 40) is **DENIED**.

SIGNED this 8th day of February, 2021.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE